IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6587 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NILESHKUMAR JAYANTILAL VAIDYA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1,
None for Respondent(s) : 1, 3,
MR MI PATEL for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/04/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner, who was at the relevant time, serving as a peon purely on temporary basis as a daily wager in the

respondent No.2 – Padra Nagar Palika has prayed for an appropriate writ, direction and/or order directing the respondents to confirm the petitioner on permanent post of peon from the date of his joining and to give him all the benefits as per the rules and regulations.

2. The only submission and the contention raised on behalf of the petitioner is that the petitioner is working as a daily wager – peon on temporary basis since many years and therefore, the petitioner is to be made permanent on regular establishment and is to be given all the benefits available to the permanent employees from the date of his joining. It is also the case on behalf of the petitioners that the respondent No.2 invited the applications for filling up the post of peon and the petitioner has also applied for the same and therefore, the post is available as the petitioner has applied hence, he is required to be absorbed on permanent post.

3. The petition is opposed by the respondents. An affidavit in reply is filed on behalf of the Nagar Palika pointing out that the appointment of the petitioner as a peon is as daily wager and on temporary basis without following any due procedure of selection and at the relevant time, not on sanctioned vacant post. It is also further submitted that as and when the work was available, he was offered the work and was paid the wages as per the provisions of the Minimum Wages Act. It is submitted that merely because the applications are invited and the petitioner has applied, the petitioner is not entitled to regularization on permanent posts as the applications are required to be considered on merits and the appointment is to be approved by the Competent Authority. Therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. The claim on behalf of the petitioner in support of his prayer to make him permanent on regular establishment is the long continuance service as a daily wager on temporary basis. It is required to be noted that the petitioner has produced one order of appointment at Annexure – A to the petition dated 1.3.1993 by which, pursuant to his application dated 26.2.1993, he was appointed as a peon on purely temporary basis for a period of 3 months in the octroi department. It is true that along with the petition, he has produced one certificate issued by the then President of Nagar Palika, Padra, dated 29.10.1993 by which, it is certified by the President that he is working as a peon on temporary basis since last 10 years, however, it appears that the said certificate has been issued by the then President of Padra Nagar Palika to oblige the petitioner. No documentary evidence has been produced on record showing that he was working since last 10 years. On the contrary, as stated above, the very petitioner has produced the appointment order dated

1.3.1993, which was on the basis of the application given by him dated 26.2.1993 by which, he was appointed as a temporary peon for a period of 3 months. Thus, the contention on behalf of the petitioner that he was working since last 10 years on the basis of the certificate issued by the then President of Nagar Palika, Padra, cannot be accepted.

6. The contention on behalf of the petitioner is that as he has applied for the post of peon pursuant to the advertisement inviting the applications by the Nagar Palika, he should be made permanent. Merely because, he has applied, he cannot be made permanent. The applications are required to be considered on merits. So far as the contention on behalf of the petitioner to make him permanent on the basis of long continuance working is concerned, apart from the fact that the petitioner has miserably failed to prove that he was working as a daily wager on a temporary basis since last more than 10 years. Even otherwise, mere long continuance working is

no ground to make him permanent on permanent post. At this stage, the decision of the Honourable Supreme Court in case of ***Secretary, State of Karnataka & Umadevi & Ors*** reported in **2006 (4) SCC 1** is required to be referred to. The Honourable Supreme Court in the aforesaid decision has refused to grant relief with regard to regularization on permanent posts merely on the ground of long continuance working. Thus, considering the decision of the Honourable Supreme Court in case of ***Secretary, State of Karnataka & Umadevi & Ors.*** (supra) as well as the facts and circumstances of the present case, as narrated hereinabove, the petitioner is not entitled to any relief as prayed for in the petition with regard to confirm the petitioner in permanent post of peon and to give him all the benefits as per rules and regulations.

7. For the reasons stated above, the petition fails. Rule discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

kdc